



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA-R02-OAR-2020-0431, FRL-8851-02-Region 2]

Approval and Promulgation of State Plans for Designated Facilities; New York; Revision to Section 111(d) State Plan for MSW Landfills.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to New York's section 111(d) state plan (the "State Plan") for Municipal Solid Waste (MSW) landfills, pursuant to the Clean Air Act ("CAA" or the "Act"). The State Plan revision consists of amendments to "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills," as well as attendant revisions to the "General Provisions." New York has implemented this regulation to incorporate by reference the revised Emission Guideline (EG) promulgated by the EPA for existing MSW landfills on August 29, 2016. The purpose of the revised Emission Guideline is to reduce emissions of landfill gas containing Non-methane Organic Compounds (NMOC) and methane by lowering the emission threshold at which an existing MSW landfill must install and operate a Gas Collection and Control System (GCCS). The emissions threshold reduction will address air emissions from all affected MSW landfills, including NMOC and methane. The reduction of emissions will improve air quality and protect the public health from exposure to landfill gas emissions.

DATES: This final rule is effective on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The incorporation by reference of certain material listed in the rule is approved by the Director of the Federal Register [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA-R02-OAR-2020-0431. All documents in the docket are listed on the <http://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, *e.g.*, confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through www.regulations.gov, or please contact the person identified in the “For Further Information Contact” section for additional available information.

FOR FURTHER INFORMATION CONTACT:

Fausto Taveras, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007-1866, at (212) 637-3378, or by email at Taveras.Fausto@epa.gov.

SUPPLEMENTARY INFORMATION:

The Supplementary Information section is arranged as follows:

- I. What action is the EPA taking today?**
- II. What are the details of the EPA’s action?**
- III. What comments were received in response to the EPA’s proposed action?**
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- I. What action is the EPA taking today?**

The EPA is approving the State of New York's revised section 111(d) state plan for MSW landfills, for the purpose of incorporating the adoption of Title 6 of the New York Codes, Rules, and Regulations (NYCRR) Part 208. In a letter dated December 11, 2019, the New York State Department of Environmental Conservation (NYSDEC), on behalf of the State of New York, submitted to the EPA a state plan entitled, "Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills," which contains a New York State-approved regulation for the purpose of lowering the emissions threshold within MSW landfills through the installation of Gas Collection and Control Systems (GCCS). The State Plan incorporates by reference the revised Emission Guidelines (EG) codified at 40 CFR part 60 subpart Cf, which applies to MSW landfills that have accepted waste at any time since November 8, 1987, and commenced construction, reconstruction, or modification on or before July 17, 2014.

In accordance with the CAA, New York previously submitted a state plan on October 8, 1998, which was approved by the EPA on July 19, 1999. *See* 64 FR 38582 (Jul. 19, 1999). New York submitted a revised State Plan dated December 11, 2019 to fulfill the requirements of section 111(d) of the Act. The EPA is approving New York's State Plan revision since it applies to major sources of NMOC and methane emissions. This approval, once finalized and effective, will render New York's revised MSW rule federally enforceable.

II. What are the details of the EPA's action?

On March 12, 1996, the EPA promulgated federal Emission Guidelines (1996 EG), codified at 40 CFR part 60 subpart Cc, "Standards of Performance for New Stationary Sources and Guidelines for Control of Existing Sources: Municipal Solid Waste Landfills." *See* 61 FR 9905 (Mar. 12, 1996). Under the 1996 EG, a state plan must include the installation of a gas collection and control system at each MSW landfill that accepted waste after November 8, 1987, has a design capacity greater than or equal to 2.5 million Megagrams (Mg) and 2.5 million cubic

meters, and that emits NMOC at a rate of 50 Mg per year or more. *See* 40 CFR 60.33c(b). In accordance with section 111 of the CAA, on September 24, 2001, the NYSDEC promulgated 6 NYCRR Part 208, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” in compliance with the EPA’s federal EG for MSW landfills, codified at 40 CFR part 60 subpart Cc.

Due to significant changes within the landfill industry, such as increased scientific understanding of landfill gas emissions, changes in operation practices, and an increase in the average size and age of landfills, the EPA determined that it was appropriate to update the 1996 EG. As a result, on August 29, 2016, the EPA promulgated a revised EG, codified at 40 CFR part 60 subpart Cf, entitled, “Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.” *See* 81 FR 59275 (Aug. 29, 2016). The revised EG updated the control requirements, monitoring, reporting, and recordkeeping provisions for existing MSW landfill sources. The revised EG is designed to significantly reduce emissions of landfill gas containing NMOC and methane by further reducing the emissions threshold at which a landfill must install and operate a GCCS. In contrast to the 1996 EG, the revised EG reduces the threshold for installing a GCCS to 34 Mg/year of NMOC for active MSW landfills. Meanwhile, closed MSW landfills will retain the threshold of 50 Mg/year of NMOC for installing a GCCS. In order to continue complying with the Act and the newly adopted EG, on August 5, 2019, New York adopted its revised 6 NYCRR Part 208, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” and amended Part 200, “General Provisions,” with an effective date of September 4, 2019. The purpose of the revisions was to incorporate by reference the revised EG for MSW landfills promulgated at 40 CFR part 60 subpart Cf.

In its proposal (*see* 86 FR 11485 (Feb. 25, 2021)), the EPA evaluated New York’s State Plan for compliance with regulations at 40 CFR part 60 subpart Ba governing the timing and

completeness requirements for the submission of state plans. *See* 40 CFR 60.23a and 60.27a. On August 26, 2019, the EPA finalized a rule (referred to as the “Ba Rule”) that amended the EG codified at 40 CFR part 60 subpart Cf to incorporate these subpart Ba timing and completeness requirements. *See* 84 FR 44547 (Aug. 26, 2019); 40 CFR 60.30f. However, on January 19, 2021, the D.C. Circuit issued a decision vacating these requirements of subpart Ba, *see Am. Lung Ass’n v. EPA*, 985 F.3d 914, 991-95, and the court subsequently also vacated the Ba Rule in an April 5, 2021 order, *see Environmental Defense Fund v. EPA*, No. 19-1222, Dkt. 1893133. Accordingly, the review of New York’s State Plan is no longer subject to the timing and completeness requirements of the Ba Rule, and the requirements of 40 CFR part 60 subpart B (sections 60.23 and 60.27) now apply instead.

The court’s vacatur of the Ba Rule does not affect the approvability of New York’s State Plan. First, the completeness requirements of subpart Ba evaluated at proposal no longer apply, and New York’s State Plan meets the applicable requirements of 40 CFR 60.23 and 60.27. Further, the vacatur did not affect the substantive requirements of the EG at 40 CFR part 60 subpart Cf.

III. What comments were received in response to the EPA’s proposed action?

The EPA received four comments during the 30-day public comment period in response to its February 25, 2021 proposed approval of New York’s State Plan revision. The specific comments may be viewed under Docket ID Number EPA-R02-OAR-2020-0431 on the <http://www.regulations.gov> website. Two public comments, posted on March 2, 2021 and March 26, 2021, support the EPA’s proposed rulemaking to approve New York’s revised State Plan.

Two public comments, received on March 28, 2021 and March 29, 2021, were submitted by the New York Chapter of the Solid Waste Association of North America (SWANA-NY) and the National Waste & Recycling Association (NWRA). Both comments are substantially similar and

acknowledge that New York's State Plan was submitted to the EPA on December 11, 2019. However, on March 26, 2020, the EPA promulgated the National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review (NESHAP MSW RTTR) (85 FR 17244). This final rule revised the most recent MSW Landfill New Source Performance Standards (NSPS) (*see* 40 CFR part 60 subpart XXX) and EG (subpart Cf) in order to allow affected MSW landfills to demonstrate compliance with the "major compliance provisions" of the NESHAP (40 CFR part 63 subpart AAAA) in lieu of complying with analogous provisions in the NSPS and EG. This revision permits affected MSW landfills to follow one set of operational, compliance, monitoring, and reporting provisions for pressure and temperature measurements. The commenters state that since New York's State Plan submittal predates the NESHAP MSW RTTR, it does not incorporate the NESHAP MSW RTTR. Both commenters recommend that the approval of New York's State Plan be contingent on including these changes.

The NESHAP MSW RTTR does not require affected MSW landfills to demonstrate compliance with the "major compliance provisions" of the NESHAP AAAA in lieu of complying with the NSPS (subpart XXX) and the EG (subpart Cf). Instead, sources can, depending on the circumstances, demonstrate compliance through either the NESHAP AAAA, the NSPS, or the EG. With respect to the EG, the March 26, 2020 revisions to subpart Cf permitted, but did not require, states to adopt the updates provided in the rule into their section 111(d) state plans. Accordingly, New York's State Plan is approvable as submitted, despite the fact that it predates the promulgation of the NESHAP MSW RTTR, because it meets all of the requirements of 40 CFR part 60 subpart Cf.

This concludes our response to the comments received. No changes have been made to the proposed rule as a result of the comments.

IV. What is the EPA’s conclusion?

The EPA has determined that New York’s revised State Plan meets all the applicable approval criteria as discussed above and, therefore, the EPA is approving New York State’s CAA section 111(d) revised State Plan for existing municipal solid waste landfills.

V. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the 6 NYCRR Part 208, “Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills,” regulation described in the amendments to 40 CFR part 62 set forth below. The EPA has made, and will continue to make, these materials generally available through www.regulations.gov, Docket No. EPA-R02-OAR-2020-0431 and in hard copy at the EPA Region 2 Office (please contact the person identified in the “For Further Information Contact” section of this preamble for more information).

VI. Statutory and Executive Order Reviews

Pursuant to EPA regulations, the Administrator may approve a plan or any portion thereof upon a determination that it meets sections 111(d) and 129 of the Act and applicable regulations. *See* 40 CFR 62.02.

Accordingly, this action, once finalized, would merely approve state law that meets federal requirements, and would not impose additional requirements beyond those imposed by state law. For that reason, this action, once finalized:

- Is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)); and Executive Order

13563 (76 FR 3821 (Jan. 21, 2011));

- Is not an Executive Order 13771 (82 FR 9339 (Feb. 3, 2017)) regulatory action because section 111(d) plan approvals are exempted under Executive Order 12866;

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255 (Aug. 10, 1999));

- Is not an “economically significant” regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885 (April 23, 1997));

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355 (May 22, 2001));

- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and

- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629 (Feb. 16, 1994)).

In addition, this rule is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications, and will not impose substantial direct compliance costs on tribal governments, or preempt tribal law, as specified by Executive Order

13175 (65 FR 67249 (Nov. 9, 2000)).

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Incorporation by reference, Intergovernmental relations, Landfills, Reporting and recordkeeping requirements, Waste treatment and disposal.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: August 6, 2021.

Walter Mugdan,
Acting Regional Administrator,
Region 2.

For the reasons stated in the preamble, the Environmental Protection Agency amends 40 CFR part 62 as set forth below:

PART 62 - APPROVAL AND PROMULGATION OF STATE PLANS FOR DESIGNATED FACILITIES AND POLLUTANTS

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et. seq.*

Subpart HH-New York

2. Section 62.8104 is revised to read as follows:

§ 62.8104 Identification of plan.

(a) *Identification of plan.* On December 11, 2019, the New York State Department of Environmental Conservation (NYSDEC) submitted to the Environmental Protection Agency (EPA) a Clean Air Act revised section 111(d) state plan, to incorporate revisions to Title 6 NYCRR Parts 208 and 200 for the implementation of 40 CFR part 60, subpart Cf, “Emissions Guidelines for Municipal Solid Waste Landfills.”

(b) *Identification of sources.* The plan applies to all existing municipal solid waste landfills under the jurisdiction of the New York State Department of Environmental Conservation that have accepted waste after November 8, 1987, and began construction, reconstruction, or modification on or prior to July 17, 2014, and have a design capacity threshold of 2.5 million megagrams (Mg) and 2.5 million cubic meters, as described in 40 CFR 60 subpart Cf.

(c) *Effective date.* The effective date of the plan for **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(d) *Incorporation by reference.* (1) The material incorporated by reference in this section was approved by the Director of the Federal Register Office in accordance with U.S.C

552(a)(1) and 1 CFR part 51. The material is available from the sources identified elsewhere in this paragraph. It may be inspected or obtained from the EPA Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007-1866, 212-637-3378. Copies may be inspected at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, email fr.inspection@nara.gov or go to: www.archives.gov/federal-register/cfr/ibr-locations.html.

(2) State of New York, Department of State, Albany, New York 12231;
<https://dos.ny.gov/state-register>.

(i) 6 NYCRR Part 208: Official Compilation of (New York) Codes, Rules and Regulations; Title 6 – Environmental Conservation; Part 208 – Landfill Gas Collection and Control Systems for Certain Municipal Solid Waste Landfills, effective September 4, 2019.

(ii) [Reserved]